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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

11 ANA BIOCINI, ) No. C 08-0885 SI  
12 Petitioner, )  
13 v. )  
14 MICHAEL MUKASEY, in his official ) GOVERNMENT'S RETURN  
15 capacity as Attorney General of the United )  
16 States; et al., )  
17 Respondents. )  
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GOVERNMENT'S RETURN  
C 08-0885 SI

## I. INTRODUCTION

Petitioner Ana Biocini (“Petitioner”), a convicted cocaine dealer, asks the Court to enjoin Respondents from removing her from the United States, and to order her immediate release from immigration custody. The Court’s review is confined to matters of detention. Accordingly, the Court lacks jurisdiction to enjoin her removal, or to grant bond. Moreover, Petitioner is subject to mandatory detention due to her federal conviction for drug dealing. Her Petition should be denied.

## II. FACTUAL BACKGROUND

On April 29, 2003, Petitioner pleaded guilty to violating 21 U.S.C. § 846, conspiracy to distribute cocaine. Exh. 1. The total amount of controlled substances involved in the conspiracy was approximately 71 kilograms of cocaine, 205 grams of cocaine, 23 pounds of marijuana, and 3,178 doses of ecstasy. Habeas Petition, Exh. L, p. 226. During the course of the investigation, agents determined that Petitioner was the primary source for the cocaine, and was also involved in the distribution of marijuana. Id. The record reflects that Petitioner agreed to cooperate only after all but one co-defendant pleaded guilty, three years after her arrest, and after a jury had been selected for her trial. Id., Exh. L, p. 410-13. Further, the record is abundantly clear that the Government did not promise Petitioner relief from deportation in exchange for her plea. Id., p. 472 (“Immigration and deportation is certainly an issue. And there were no promises as part of the plea agreement.”)(emphasis added)); Id., pp. 481-92 (plea agreement).

On January 11, 2005, an Immigration and Customs Enforcement (“ICE”) agent encountered Petitioner pursuant to her incarceration at the Federal Correctional Institution (“FCI”). Exh. 2. The ICE agent noted that she was serving a thirty month sentence, and that she was being processed for a Notice to Appear (“NTA”). Id. The NTA was served on Petitioner on February 9, 2005. Habeas Petition, Exh. L, pp. 399-404. ICE alleged therein that Petitioner was removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony. Id., p. 401.

Petitioner's first immigration hearing was initially scheduled for July 18, 2005. See Habeas Petition, Exh. L, p. 1443. However, it was subsequently rescheduled for May 16, 2005. Id., p. 1442. On May 16, 2005, the immigration court set an individual hearing on Petitioner's case for September 19, 2005. Id., p. 1444. On August 10, 2005, Petitioner moved for a continuance of her

1 immigration hearing so her attorney could prepare her case. Exh. 3. The immigration court granted  
 2 the motion. Id. Petitioner requested a second continuance on October 12, 2005. See id., pp. 1460-  
 3 63. The immigration court granted this second continuance. Exh. 4. Petitioner's individual hearing  
 4 was held on December 19, 2005. Id., pp. 117-220. At that hearing, Petitioner conceded the  
 5 allegations in the NTA, and the IJ determined that Petitioner's crime constituted a particularly  
 6 serious crime under Matter of Y-L-, 23 I&N Dec. 270 (A.G. 2002). Id., p. 57.

7 Upon completion of her federal prison term, Petitioner entered ICE custody on  
 8 March 2, 2006. Exh. 5. On April 13, 2006, the immigration judge denied Petitioner's request for  
 9 relief from removal, finding that she had failed to prove eligibility for relief under the Convention  
 10 Against Torture. Habeas Petition, Exh. L, p. 96-102. Petitioner appealed the decision to the Board  
 11 of Immigration Appeals ("BIA"). Id., p. 50. On June 20, 2006, she requested a twenty-one day  
 12 extension of time to file her opening brief. Id., p. 45. On August 31, 2006, the BIA denied her  
 13 appeal. Id., pp. 2-3.

14 On September 11, 2006, Petitioner petitioned the Court of Appeals for the Ninth Circuit for  
 15 review of the BIA's decision, and moved to stay her removal. Exh. 6. On November 27, 2006, ICE  
 16 informed Petitioner of its decision to continue her detention, stating that her removal was delayed  
 17 solely through the stay of removal she had obtained from the Ninth Circuit, and that her removal was  
 18 likely because a travel document had been obtained. Exh. 7. On December 21, 2006, the  
 19 Government moved to dismiss Petitioner's appeal. Exh. 6, dated Dec. 21, 2006. Five days later,  
 20 Petitioner requested additional time to respond to the motion to dismiss. Id., dated Dec. 26, 2006.  
 21 On February 22, 2007, the appellate court denied the Government's motion to dismiss, without  
 22 prejudice to renewing the arguments in the Government's brief. Id.

23 On April 25, 2007, the immigration judge ("IJ") denied Petitioner's motion for bond  
 24 redetermination. Habeas Petition, Exh. B. On May 25, 2007, Petitioner sought a two week  
 25 extension to file her opening brief at the Ninth Circuit. Exh. 6. The appellate court granted her  
 26 motion. Id. On June 13, 2007, Petitioner filed her opening brief. Id. On June 28, 2007, the BIA  
 27 denied Petitioner's bond appeal, determining that because there was a final administrative order,  
 28 neither the BIA nor the immigration judge had authority to set bond. Habeas Petition, Exh. C.

On July 30, 2007, the Government requested an extension to file the answering brief. Id. The appellate court granted the extension. Exh. 6. On September 21, 2007, Petitioner filed additional legal citations. Id. The case subsequently entered the appellate court's mediation program, and on January 29, 2008, the matter was remanded to the BIA. Id. The joint remand motion was based on a recent Ninth Circuit decision, and agreed that on remand, the BIA needed to determine whether Petitioner's conviction was a particularly serious crime under Matter of Frentescu, 18 I&N Dec. 244 (BIA 1992).<sup>1</sup> Exh. 8. On December 7, 2007, DHS determined that Petitioner's custody status should be continued. Exh. 9. On February 28, 2008, DHS notified Petitioner that her custody was to be continued pursuant to 8 U.S.C. § 1226. Exh. 10.

### III. LEGAL BACKGROUND

## A. DETENTION PROVISIONS IN THE IMMIGRATION AND NATIONALITY ACT

The authority of ICE to detain an alien subject to removal<sup>2</sup> charges is found in 8 U.S.C. §§ 1226 and 1231.<sup>3</sup> Section 1226 pertains to detention when the alien is in a “pre-removal” order status, i.e., before a removal order becomes final. See Demore v. Kim, 538 U.S. 510 (2003). While an alien is in “pre-removal” order status, a decision by ICE as to whether an alien is entitled to bond may be appealed to an IJ, see 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)(1), and then to the BIA. See 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1236.1(d)(3). Section 1231 pertains to detention when the alien is in a “post-order” removal status, i.e., after a removal order has become final. See Zadvydas v. Davis, 533 U.S. 678 (2001). Here, because Petitioner’s removal order is not yet final, and

<sup>1</sup>Although this decision has been superceded by statute in part, on August 29, 2007, the Ninth Circuit decided Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th Cir. 2007), which held that applying Matter of Y-L-, 23 I&N Dec. 270, to aliens who pleaded guilty to drug trafficking crimes prior to the date of that decision was impermissibly retroactive.

<sup>2</sup>Although the terms have changed in the intervening years, “any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, § 309(d)(2), 110 Stat. 3009.

<sup>3</sup>On March 1, 2003, the Department of Homeland Security assumed responsibility for immigration enforcement. 6 U.S.C. §§ 252, 255, 542. Accordingly, the discretion formerly vested in the Attorney General is now vested in the Secretary of Homeland Security. 6 U.S.C. § 551(d).

1 because she is an alien convicted of an aggravated felony, her detention is controlled by the  
 2 mandatory detention provision found at 8 U.S.C. § 1226(c)(1)(B).

3 In Kim, the United States Supreme Court examined the history behind the mandatory  
 4 detention provisions of 8 U.S.C. § 1226. Kim, 538 U.S. at 518-20. The Court found that “Congress  
 5 adopted this provision against a backdrop of wholesale failure by the INS to deal with increasing  
 6 rates of criminal activity by aliens.” Id. at 518. In addition, “Congress [] had before it evidence that  
 7 one of the major causes of the INS’ failure to remove deportable criminal aliens was the agency’s  
 8 failure to detain those aliens during their deportation proceedings.” Id. at 519. Indeed, the statistics  
 9 demonstrated that “[o]nce released, more than 20% of deportable criminal aliens failed to appear for  
 10 their removal hearings.” Id. Thus, the Court held that “[d]etention during removal proceedings is  
 11 a constitutionally permissible part of that process.” Id. at 531.

12 The application of Kim is not affected by the Ninth Circuit’s recent decision in Tijani v. Willis, 430 F.3d 1241 (9th Cir. 2005). In that mere three paragraph majority opinion, the appellate  
 13 court declined to set any precise limit on the Government’s detention authority under 8 U.S.C.  
 14 § 1226(c) and Kim, but rather ruled that under the circumstances of his protracted proceedings,  
 15 Tijani’s detention of two years and eight months required that he be granted a bond hearing before  
 16 an immigration judge. Tijani, 430 F.3d at 1242. Notably, in that case the Ninth Circuit  
 17 distinguished Kim because there, “the alien conceded deportability.” Id. The appellate court  
 18 declined to immediately order Tijani’s release; instead, the Ninth Circuit remanded the case to the  
 19 district court with instructions to grant the writ unless the Government provided Tijani with a  
 20 hearing before an immigration judge within sixty days of the appellate court’s order. Id.

22       B.     SCOPE OF REVIEW

23 On May 11, 2005, the President signed into law the “Emergency Supplemental  
 24 Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005,” Pub. L. No.  
 25 109-13, 119 Stat. 231. Division B of the Act consists of the “REAL ID Act.” Section 106 of the  
 26 REAL ID Act amends a portion of 8 U.S.C. § 1252, and clarifies the scope of judicial review of  
 27 removal orders. Pursuant to section 106, a petition for review to the court of appeals is the exclusive  
 28 means of review of an administrative order of removal, deportation, or exclusion. REAL ID Act

1       § 106(a).

2           The REAL ID Act allows habeas review only over challenges to detention that are  
 3 independent of challenges to removal. See H.R. Rep. No. 109-72 (2005), reprinted in 2005  
 4 U.S.C.C.A.N. 240, 300 (stating “section 106 would not preclude habeas review over challenges to  
 5 detention that are independent of challenges to removal orders. Instead, the bill would eliminate  
 6 habeas review only over challenges to removal orders.”) (emphasis added). Accordingly, the  
 7 Court’s decision is confined to the issue of whether Petitioner’s detention is lawful under Kim, 538  
 8 U.S. 510 and Tijani, 430 F.3d 1241.

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#### 12           IV. ANALYSIS

13       A. PETITIONER’S DETENTION IS LAWFUL

14           1. Petitioner Is Subject To Mandatory Detention Pursuant to 8 U.S.C. § 1226

15           Congress has mandated that the Secretary “shall take into custody any alien who . . . is  
 16 deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii),  
 17 (B), (C), or (D).” 8 U.S.C. § 1226(c)(1)(B). Petitioner was convicted of violating 21 U.S.C. § 846,  
 18 conspiracy to distribute cocaine. Exh. 1. Thus, not only is she subject to mandatory detention as  
 19 an alien convicted of a drug-related offense, 8 U.S.C. § 1227(a)(2)(B)(i), but she is also subject to  
 20 mandatory detention as an alien convicted of an aggravated felony. 8 U.S.C. § 1227(a)(2)(A)(iii);  
 21 Habeas Petition, Exh. L, p. 50.

22           2. Petitioner Is Likely To Be Removed

23           Petitioner’s contention that her removal is unlikely is without merit. Habeas Petition, p. 15.  
 24 Her case was remanded to the BIA only for redetermination of whether her conviction constitutes  
 25 a particularly serious crime. Exh. 8. Because her conviction is an aggravated felony, she will  
 26 remain ineligible for asylum. Rendon v. Mukasey, – F.3d –, 2008 WL 399194, \*3 (9th Cir. 2008).  
 27 If the BIA determines that her conviction is not a “particularly serious crime,” she may be eligible  
 28 to apply for withholding of removal; however, that is a high standard to reach, and it seems unlikely

1 she will prevail. Gui v. INS, 280 F.3d 1217, 1230 (9th Cir. 2002) (explaining that an alien is entitled  
 2 to withholding of removal only if she can demonstrate that it is more likely than not that she will be  
 3 persecuted on account of her race, religion, nationality, membership in a particular social group, or  
 4 political opinion); see, e.g., Arteaga v. Mukasey, 511 F.3d 940, 945-46 (9th Cir. 2007) (“We cannot  
 5 conclude that Congress, in offering refugee protection for individuals facing potential persecution  
 6 through social group status, intended to include violent street gangs who assault people and who  
 7 traffic in drugs and commit theft.” (emphasis added)). Furthermore, unlike Tijani and as in Kim,  
 8 Petitioner has conceded that she is removable. Habeas Petition, Exh. L, p. 117. Accordingly, it is  
 9 by no means certain that Petitioner will not be removed from the United States. Indeed, her removal  
 10 seems as likely as ever.

11 Moreover, while referencing Zadvydas, the three Tijani opinions did not, as did Nadarajah  
 12 v. Gonzales, 443 F.3d 1069 (9th Cir. 2006), distill and apply the basic Zadvydas test to the  
 13 circumstance of an alien in active immigration proceedings. Nadarajah held that under “the general  
 14 immigration statutes” detention could continue only “while removal remains reasonably  
 15 foreseeable” and that after a six month period of detention a court could consider release ““once the  
 16 alien provides good reason to believe that there is no significant likelihood of removal in the  
 17 reasonably foreseeable future.” Nadarajah, 443 F.3d at 1078, quoting Zadvydas, 533 U.S. at 701.

18 In short, Nadarajah appears to have refined the Ninth Circuit’s detention analysis and held  
 19 that it is not merely the length of time that an alien has been held, but the likelihood of removal in  
 20 the foreseeable future that must be considered in assessing a release request. “By any analysis, a  
 21 five-year period of confinement of an alien who has not been charged with any crime, and who has  
 22 won relief at every administrative level, is unreasonable under the standard set forth by the Supreme  
 23 Court.” Nadarajah, 443 F.3d at 1081 (emphasis added). Here, in stark contrast, Petitioner is a  
 24 convicted drug dealer who has not won relief from any administrative or judicial body. As such, her  
 25 removal remains extremely likely. Morgan v. Gonzales, 495 F.3d 1084, 1094 (9th Cir. 2007)  
 26 (holding that alien who cooperated in drug prosecution could be removed).

27                   3.        The Length of Petitioner’s Detention Is Not Unreasonable

28                   ICE has detained Petitioner for just over two years. Exh. 5. She argues that this constitutes

1 an unreasonable length, and speculates that her detention could be indefinite. Habeas Petition, p. 16.  
 2 Contrary to Petitioner's assertion, the BIA is bound by regulation to decide her case within 90 days,  
 3 or 180 days if the case is assigned to a three-member panel. 8 C.F.R. § 1003.1(e)(8)(i). Moreover,  
 4 because Petitioner is detained, her case will be given priority, 8 C.F.R. § 1003.1(e)(8), as  
 5 demonstrated by the speed with which the BIA issued its first decision. Habeas Petition, Exh. L,  
 6 pp. 2-4. There is no reason to believe that the same will not be true in this instance.

7 Furthermore, a review of the record reveals that Petitioner's proceedings have not come close  
 8 to reaching the length of the protracted proceedings at issue in Tijani. 430 F.3d at 1246 (Tashima,  
 9 concurring) (describing how the IJ took seven months to issue his decision, and the BIA took nearly  
 10 thirteen months to decide his appeal). Here, Petitioner's immigration proceedings commenced prior  
 11 to her entry into immigration custody. Habeas Petition, Exh. L, pp. 399-404. The IJ issued the first  
 12 decision less than three months after her merits hearing, just twenty-one days after she entered  
 13 immigration custody. Id., Exh. L, p. 86. He issued the amended decision three weeks after the first  
 14 decision. Id., Exh. L, p. 53. The BIA issued its decision forty-three days after she filed her opening  
 15 brief. Id., Exh. L, pp. 2, 4. Despite the Government's effort to expeditiously resolve her case,  
 16 Petitioner requested two continuances at the immigration court. Exh. 3; Habeas Petition, Exh. L, pp.  
 17 1460-63. In addition, during the course of the administrative and Ninth Circuit appellate  
 18 proceedings, Petitioner made three requests to extend the briefing schedules. Habeas Petition, Exh.  
 19 L, p. 50; Exh. 6, dated Dec. 26, 2006 and May 25, 2007.

20 Courts have consistently held that litigation efforts that stymie removal efforts serve to toll  
 21 the permissible detention periods set forth under Zadvydas. Lawrence v. Gonzales, 446 F.3d 221,  
 22 227 (1st Cir. 2006) (rejecting Zadvydas claim because alien's "continued detention here occurred  
 23 pursuant to his own procuring of stays incident to his legal challenges to the removal order . . . .");  
 24 Grewal v. DHS, 2005 WL 3008886 \* 3 (E.D. Pa. Nov. 5, 2005) ("[T]he court must exclude the time  
 25 during which the DHS has been enjoined from effecting petitioner's removal."); Thelemaque v.  
 26 Ashcroft, 363 F. Supp. 2d 198, 219 (D. Conn. 2005) (noting that alien's "own actions in seeking  
 27 further judicial review of his . . . claims do not give him grounds to complain that his removal is not  
 28 reasonably possible within the meaning and intent of Zadvydas."); Esogbue v. Ashcroft, 2005 WL

1 767884 \*5 (E.D. La. March 23, 2005) (noting that “the [removal] period does not run while the INS  
 2 is prevented from effecting the removal . . .”); Abimbola v. Ridge, 2005 WL 588769 \*2-3 (D.  
 3 Conn. Mar. 7, 2005) motion for reconsideration denied, 2005 WL 2663075 (October 15, 2005),  
 4 aff’d, 2006 WL 1408375 (2d Cir. May 18, 2006) (noting that “but for . . . [alien’s] seeking and/or  
 5 receiving numerous judicial stays and filing his numerous petitions for reconsideration and  
 6 appeals,...[alien] could have been speedily deported . . .”). Here, Petitioner’s repeated requests for  
 7 continuances delayed her proceedings by nearly five months.<sup>4</sup> Exh. 3; Habeas Petition, Exh. L, pp.  
 8 50, 1460-63; Exh. 6, dated Dec. 26, 2006 and May 25, 2007. This time should not be incurred  
 9 against the Government.

10 B. THE COURT LACKS JURISDICTION TO CONSIDER PETITIONER’S  
11 REMAINING ARGUMENTS

12 1. Medical Claims Are Not Cognizable In Habeas Proceedings

13 Petitioner also claims that her health is at risk. Habeas Petition, pp. 22-23. Claims of  
 14 inadequate medical care are not cognizable in habeas proceedings. 28 U.S.C. § 2241; Olajide v.  
15 B.I.C.E., 402 F. Supp. 2d 688, 695 (E.D. Va. 2005). The United States Supreme Court has stated  
 16 that

17 [c]hallenges to the lawfulness of confinement or to particulars affecting its duration  
 18 are the province of habeas corpus. An inmate’s challenge to the circumstances of his  
 confinement . . . may be brought under [42 U.S.C.] § 1983.

19 Hill v. McDonough, 547 U.S. 573, 579 (2006) (citations omitted). Accordingly, Petitioner’s  
 20 arguments regarding her health are irrelevant to the issues before the Court.<sup>5</sup> See Spina v. Aaron,  
 21 821 F.2d 1126, 1128 (5th Cir. 1987) (“Congress has chosen habeas corpus as the appropriate avenue  
 22 to challenge the fact or duration of a prisoner’s confinement.”)(emphasis added); Tunstall v.  
 23 Schwartz, No. Civ. S-04-2658 DFL, 2006 WL 3300463, at \*1 (E.D. Cal. Nov. 14, 2006) (stating that

24  
 25 <sup>4</sup>The Government also moved for an extension of time to file the answering brief due to  
 26 reassignment of the case to a new attorney, and was granted 60 days to do so. Exh. 6. However,  
 27 Petitioner filed additional citations just six days before the Government’s answering brief was due  
 under the extended deadline. Exh. 6, dated Sept. 21, 2007.

28 <sup>5</sup>For the same reason, Petitioner’s apparent challenge to the location of her confinement is  
 not properly before the Court. See Habeas Petition, p. 12.

1 claims concerning alleged denial of access to medical care are not cognizable in a federal habeas  
 2 corpus action) (citing Preiser v. Rodriguez, 411 U.S. 475 (1973)).

3           2.       The Court Lacks Jurisdiction To Grant Bond

4           Contrary to Petitioner's contentions that the Court has jurisdiction to grant bond, Habeas  
 5 Petition, p. 23, the Court lacks jurisdiction to do so. The cases she relies upon do not support her  
 6 argument that as an alien subject to mandatory detention, she may ask the district court to grant bail.  
 7 See Nadarajah, 443 F.3d at 1083 n.5 (discussing the applicability of the Federal Rules of Appellate  
 8 Procedure to an appeal from denial of a habeas petition); Mapp v. Reno, 241 F.3d 221, 228-29 (2d  
 9 Cir. 2001) (holding that where an alien was in post-order custody, the district court had power to  
 10 consider whether the petitioner was entitled to release on bail). The detention statute at issue  
 11 contains a clear prohibition:

12           No court may set aside any action or decision by the Attorney General under this  
 13 section regarding the detention or release of any alien or the grant, revocation, or  
 denial of bond or parole.

14 8 U.S.C. § 1226(e). Even if the Court were to determine that a writ of habeas corpus should issue,  
 15 the Ninth Circuit has made it clear that any release would be "subject to terms and conditions to be  
 16 set by the appropriate delegate of the Attorney General," and not subject to terms set by the Court.  
 17 Nadarajah, 443 F.3d at 1084.

18           3.       The State-Created Danger Doctrine Is Inapplicable In A Habeas Proceeding

19           Petitioner contends that her removal is unlikely under the "state created danger" doctrine,  
 20 and asks the Court to enjoin her removal. Habeas Petition, pp. 15, 18. Her argument is superfluous  
 21 because the stay of removal issued by the Ninth Circuit remains in place. Exh. 6, Electronic Docket  
 22 entry dated Jan. 29, 2008. Moreover, this argument clearly challenges her removal, a subject that  
 23 is beyond the Court's jurisdiction. REAL ID Act, § 106(a); 8 U.S.C. § 1252(a)(5); see Ghotra v.  
 24 Chertoff, No. C-07-4428 MMC, 2007 WL 3232240, \*1 (N.D. Cal. Oct. 31, 2007) (finding the  
 25 district court lacks jurisdiction to stay an order of removal); Diallo v. ICE, No. C07-125Z, 2007 WL  
 26 2874964, \*2 (W.D. Wash. Sept. 28, 2007) (finding that district courts lack jurisdiction to hear any  
 27 claim arising from a decision of the Secretary to execute an order of removal).

28           The Ninth Circuit's decision in Morgan, 495 F.3d 1084, does not suggest otherwise. There,

1 the appellate court stated that where a petitioner raises a colorable legal claim that cannot be asserted  
2 before the agency, the case might be transferred from the appellate court to a district court for an  
3 evidentiary hearing. Morgan, 495 F.3d at 1090. The appellate court did not suggest that the district  
4 court should assume jurisdiction over the issue in the first instance.<sup>6</sup> Id.

5 **V. CONCLUSION**

6 For the foregoing reasons, Respondents respectfully request the Court to deny Petitioner's  
7 Petition for a Writ of Habeas Corpus.

8 Dated: March 21, 2008

Respectfully submitted,

9 JOSEPH P. RUSSONIELLO  
10 United States Attorney

11 /s/  
12 MELANIE L. PROCTOR  
13 Assistant United States Attorney  
14 Attorneys for Respondents

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24 Regardless, due to the extremely serious nature of the allegations Petitioner has raised  
25 against a federal prosecutor and federal agents, undersigned counsel wishes to note that a review of  
26 the record reveals the patent absurdity of Petitioner's contention that "the federal government  
27 created a dangerous situation for [her] that would not have existed without government  
28 involvement." Habeas Petition, p. 20. Simply put, the Government did not ask Petitioner to traffic  
in drugs; moreover, none of the facts described in Wang v. Reno, 81 F.3d 808 (9th Cir. 1996), are  
present in the instant case. Id. at 811-12 (describing the extreme mistreatment of Wang, as well as  
the fact that it appeared the United States prosecutors knew his confession in China had been  
coerced).

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 ANA BIOCINI, ) No. C 08-0885 SI  
13 Petitioner, )  
14 v. )  
15 MICHAEL MUKASEY, in his official ) DECLARATION OF MELANIE  
capacity as Attorney General of the United ) PROCTOR  
16 States; et al., )  
17 Respondents. )  
\_\_\_\_\_  
I, Melanie Proctor, declare and state as follows:

1. I am employed by the United States Attorney's Office, Northern District of California, as an Assistant United States Attorney. My current employment address is 450 Golden Gate Avenue, Box 36055, San Francisco, California, 94102. I am the attorney assigned to the above-captioned matter.

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2. I prepared the Government's Return on the basis of the pleadings filed in this case, as well as the administrative record ("A-file"). I reviewed the A-file at the Department of Homeland Security, Deportation and Removal Office, located at 630 Sansome Street, San Francisco, California, and obtained copies of the most recent custody decisions directly from the Supervisory Detention and Deportation Officer. The documents attached as Exhibits 1, 2, 3, 4, 5, 7, 9, and 10 are from the A-file.

3. Exhibit 6 is a true and correct copy of the docket from Petitioner's Ninth Circuit petition for review.

4. The Office of Immigration Litigation provided me with an electronic copy of the joint motion to remand Petitioner's petition for review to the Board of Immigration Appeals, attached hereto as Exhibit 8.

A true copy of said documents accompanies the Government's Return in this case.  
Signed this 21st day of March, 2008, in San Francisco, California.

/s/  
MELANIE L. PROCTOR

## **INDEX OF EXHIBITS**

Judgment in Criminal Case 95-0187-01 CRB .....	Exhibit 1
Record of Deportable/Inadmissible Alien .....	Exhibit 2
Petitioner's Motion to Reschedule Hearing, Order Granting Motion .....	Exhibit 3
Order Granting Motion to Reschedule Hearing .....	Exhibit 4
Notice of Custody Determination dated March 2, 2006 .....	Exhibit 5
General Docket Sheet for Court of Appeals Docket No. 06-74408 .....	Exhibit 6
Decision to Continue Detention dated November 27, 2006 .....	Exhibit 7
Joint Motion to Remand Petition for Review .....	Exhibit 8
Decision to Continue Detention dated December 7, 2007 .....	Exhibit 9
Notice of Custody Determination .....	Exhibit 10

# Exhibit 1

United States District Court  
Northern District of California

FILED

APR 29 2003

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIAUNITED STATES OF AMERICA  
v.  
ANA BEATRIZ BIOCINIJUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

Case Number: CR-95-0187-01 CRB

Robert Waggener  
Defendant's Attorney

## THE DEFENDANT:

pleaded guilty to count(s): I of the Indictment.  
 pleaded nolo contendere to count(s) \_\_\_ which was accepted by the court.  
 was found guilty on count(s) \_\_\_ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. §846	Conspiracy to Distribute Cocaine		I

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_.  
 Count(s) \_\_\_ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 4184

April 28, 2003

Defendant's Date of Birth: 1954

Date of Imposition of Judgment

Defendant's USM No.: 90920-011  
9306104

Signature of Judicial Officer

## Defendant's Residence Address:

Honorable Charles R. Breyer, U. S. District Judge

100 N. Whisman Rd #3114  
Mountain View, CA 94043

Name &amp; Title of Judicial Officer

## Defendant's Mailing Address:

100 N. Whisman Rd #3114  
Mountain View, CA 94043

April 29, 2003  
I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.  
ATTEST:

RICHARD W. WIEKING  
Clerk, U.S. District Court  
Northern District of CaliforniaBy BARBARA ESPINOZA  
Deputy ClerkDate APR 30 2003

## Exhibit 2

U.S. Department of Justice

Immigration and Naturalization Service

## Record of Deportable/Inadmissible Alien

Family Name (CAPS)		First		Middle		Sex <b>F</b>	Hair <b>BRO</b>	Eyes <b>BLU</b>	Cmplxn <b>LGT</b>
<b>BIOCINI, Ana Beatriz</b>									
Country of Citizenship <b>COLOMBIA</b>		Passport Number and Country of Issue Case No: <b>SFR0501001621</b> A091 182 333		File Number		Height <b>65</b>	Weight <b>150</b>	Occupation	
U.S. Address <b>IN I.C.E. CUSTODY SAN FRANCISCO, CALIFORNIA 94111</b>									
Date, Place, Time, and Manner of Last Entry <b>02/11/1981, Unknown Time, MIA, NONIMMIGRANT VISITOR</b>				Passenger Boarded at					
Number, Street, City, Province (State) and Country of Permanent Residence									
Date of Birth <b>Age: 50</b>		Date of Action <b>01/28/2005</b>		Location Code <b>SFR/SFR</b>					
City, Province (State) and Country of Birth <b>CALI, OTHER - FOR COUNTRIES OTHER THAN US, COLOMBIA</b>		AR <input checked="" type="checkbox"/>	Form: (Type and No.) <b>SAME,</b>	Lifted <input type="checkbox"/>	Not Lifted <input type="checkbox"/>				
NIV Issuing Post and NIV Number		Social Security Account Name <b>SAME,</b>							
Date Visa Issued		Social Security Number <b>[REDACTED]</b>							
Immigration Record <b>POSITIVE - See Narrative</b>				Criminal Record <b>None known</b>					
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) <b>BIOCINI, George</b>						Nationality: <b>UNITED STATES</b>		Number and Nationality of Minor Children <b>CLAIMS ONE (1) USC</b>	
Father's Name, Nationality, and Address, if Known <b>COLOMBIA</b>				Mother's Present and Maiden Names, Nationality, and Address, if Known <b>RAZINES, Stella</b> <b>DECEASED</b>					
Monies Due/Property in U.S. Not in Immediate Possession		Fingerprinted? <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	INS Systems Checks		Charge Code Word(s) <b>See Narrative</b>		
Name and Address of (Last)/(Current) U.S. Employer		Type of Employment			Salary	Employed from/to Hr.			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)									
<p><b>OTHER ALIASES KNOWN BY</b> <b>JARAMILLO, ANA RACINES</b> <b>JARAMILLO DE RIVERA, ANA</b></p> <p><b>SCARS, MARKS AND TATTOOS</b> <b>NONE VISIBLE/NONE INDICATED</b></p> <p><b>MOTHER'S NATIONALITY</b> <b>COLOMBIA</b></p> <p><b>CHARGE CODE WORD(S)</b> <b>R2A3</b> <b>R2A3</b></p> <p><b>Narrative Title: Record of Deportable/Excludable Alien</b> <b>Narrative Created by HUELGA</b></p> <p><b>BOP#: 93061-011</b> <b>EPRD: 03/02/2005</b></p> <p><b>On January 11, 2005, Immigration and Customs Enforcement (ICE) encountered Subject pursuant to her incarceration at the Federal Correctional Institution (FCI) Dublin,</b></p> <p><b>Alien has been advised of communication privileges. _____ (Date/Initials)</b></p> <p><b>Disribution:</b> <b>File</b> <b>Statistics</b> <b>Agent</b></p>									
		Received: (Subject and Documents) (Report of Interview) Officer: <b>MARIO HUELGA</b>							
		2005 on: <b>January 28, 2005</b> at <b>1210</b> (time)							
		Disposition: <b>Warrant of Arrest/Notice to Appear</b>							
		Examining Officer: <b>DOW CLARK III</b> <i>Dow J Clark</i>							

MARIO HUELGA  
IMMIGRATION AGENT

(Signature and Title of INS Official)

Alien's Name <b>BIOCINI, Ana Beatriz</b>	File Number Case No: <b>SFR0501001621 A091 182 333</b>	Date <b>01/28/2005</b>
---	---	---------------------------

California.

Subject claims to be a 50 year-old divorced female, native and citizen of Colombia who entered the United States on or about February 11, 1981, at or near Miami, Florida, as a nonimmigrant visitor (B-2).

On May 1, 1989, Subject's status was adjusted to that of a lawful permanent resident pursuant to Section 245(A) of the Immigration and Nationality Act.

Subject claims to have one (1) USC child that is residing with his father in Mountain View, California.

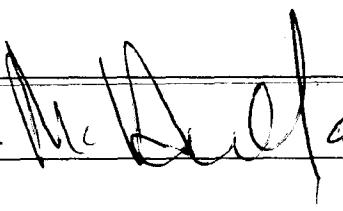
On April 28, 2003, Subject was convicted in the United States District Court, Northern District of California (CR-95-0187-01 CRB) for the offense of CONSPIRACY TO DISTRIBUTE COCAINE, in violation of Title 21 United States Code, Section 846. Subject was subsequently sentenced to thirty (30) months incarceration.

Subject stated that her case and/or conviction were under appeal. A review of the United States District Court Records found that the Subject has NOT filed an appeal of her aggravated felony conviction(s).

Subject did express fear if returned to her country of origin/citizenship/nationality.

Subject claims no pending applications/petitions/ties/equities with the Service at this time.

Due to SUBJECT's AGGRAVATED FELONY conviction(s), she is being processed for a NOTICE TO APPEAR/WA.

Signature <b>MARIO HUELGA</b> 	Title <b>IMMIGRATION AGENT</b>
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## Exhibit 3

BEATRIZ BIOCINI # 9306 11  
 FEDERAL CORRECTIONAL INSTITUTION  
 5701 8th ST CAMP PARKS  
 DUBLIN, CA. 94568

AS  
 PLE  
 59/10

UNITED STATES DEPARTMENT OF JUSTICE  
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

HONORABLE: JUDGE MURRY

UNITED STATES OF AMERICA

Respondent

v.

ANA BEATRIZ BIOCINI

Petitioner

ALIEN # 91182333

MOTION TO RESCHEDULE THE INDIVIDUAL  
 HEARING SET UP FOR SEPTEMBER 19, 2005

COMES NOW PETITIONER ANA BEATRIZ BIOCINI REQUESTING This Honorable Court for a  
 continuence for the Individual hearing schedule on September 19, 2005.

Unfortunatelly a postponent of 3 more weeks will be necessary to have my Attorney  
 from U.C Davis to completely investigate and prepare my case including schedule for  
 interviews with me at the Federal Correctional Institution here at Dublin, Ca.

For this main reason I'am Requesting this Honorable Court to Grant an extention  
 and re-schedule the September 19, 2005 hearing for the next available opening court  
 calendar for an individual hearing.

DATED This 10, Day of August, 2005

Respectfully Submitted

Ana B BIOCINI  
 ANA BEATRIZ BIOCINI  
 FEDERAL CORRECTIONAL INSTITUTION  
 5701 8th ST CAMP PARKS  
 DUBLIN CA 94568

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 1  
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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
550 KEARNY ST., SUITE 800  
SAN FRANCISCO, CA 94108

IN THE MATTER OF:

CASE NO. A91-182-333

\*F-BIOCINI, ANA BEATRIZ

RESPONDENT

IN REMOVAL PROCEEDINGS

APPLICATION: MOTION FOR CONTINUANCE

ON BEHALF OF RESPONDENT:

\*F-BIOCINI, ANA BEATRIZ  
FCI  
DUBLIN, CA 94568

ON BEHALF OF THE SERVICE:

AGUILAR, JASON B.  
Asst. District Counsel, USINS  
550 Kearny Street, Suite 1000  
San Francisco, CA 94108

ORDER OF THE IMMIGRATION JUDGE

The Immigration Judge has considered the motion for a continuance filed by

Respondent/Applicant       Immigration and Naturalization Service

for the hearing scheduled for Sep 19, 2005 and concludes that the motion should be:

GRANTED because the Service does not oppose the request.

GRANTED because good cause has been established for the requested continuance.

DENIED because no good cause has been established for the requested continuance.

DENIED because \_\_\_\_\_

IT IS ORDERED that the motion be, and it is hereby, denied.

IT IS ORDERED that the motion be, and is hereby granted.

Notice of the new hearing date will be served in the appropriate manner.

DATE: 8/25/05

Anthony S. Murry  
ANTHONY S. MURRY  
Immigration Judge

Place on  
D5 October  
PHE calendar  
for 1pm ITC

MEI

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
SAN FRANCISCO, CA

\*F-BIOCINI, ANA BEATRIZ  
C/O AGUILAR, JASON B.  
550 KEARNY STREET, SUITE 1000  
SAN FRANCISCO, CA 94108  
INMATE NO: 93061-011

NOTICE OF HEARING IN REMOVAL PROCEEDINGS

DATE OF NOTICE: Aug 25, 2005  
FILE: A91-182-333

You are hereby notified that a hearing in this case is scheduled ~~rescheduled~~ before the Immigration Court on Oct 17, 2005 at 1:00 P.M. at

5701 EIGHTH STREET CAMP PARKS  
DUBLIN, CA 94568

You may be represented in this proceeding at no expense to the Government by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. If you wish to be represented, your attorney or representative should appear with you at the scheduled hearing.

Except as otherwise ordered by an Immigration Judge, any motions (including motions for continuances and motions to withdraw as counsel), applications, or other correspondence concerning this case should be filed with the Immigration Court at:

550 KEARNY ST., SUITE 800  
SAN FRANCISCO, CA 94108

at least 10 days prior to the scheduled hearing. Evidence of payment of appropriate filing fees must be included.

ANYONE EXPECTING TO ENTER THE FACILITY IN ORDER TO APPEAR AT THE IMMIGRATION HEARING IS SUBJECT TO CORRECTIONS DEPARTMENT POLICIES AND PROCEDURES REGARDING ENTRY. CONTACT THE SECURITY OFFICE AT THIS PRISON IN ADVANCE OF THE DAY OF THE HEARING FOR FURTHER SPECIFIC INFORMATION ABOUT ENTRY GUIDELINES.

FOR INFORMATION REGARDING THE STATUS OF YOUR CASE, CALL TOLL FREE  
1-800-898-7180 OR 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:  MAIL (M)  PERSONAL SERVICE (P)  
TO:  ALIEN  ALIEN c/o Custodial Officer  ALIEN's ATT/REP  INS  
DATE: AUG 25 2005 BY: COURT STAFF DM  
Attachments:  EOIR-33  EOIR-28  Legal Services List  Other

2Y

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## Exhibit 4

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
550 KEARNY ST., SUITE 800  
SAN FRANCISCO, CA 94108

IN THE MATTER OF:

\*F-BIOCINI, ANA BEATRIZ

CASE NO. A91-182-333

RESPONDENT

IN REMOVAL PROCEEDINGS

APPLICATION: MOTION FOR CONTINUANCE

ON BEHALF OF RESPONDENT:

CHRISTOPHER TODD  
IMMIGRATION LAW CLINIC- UC DAVIS SCHOOL OF LAW  
ONE SHIELDS AVENUE  
DAVIS, CA 95616

ON BEHALF OF THE SERVICE:

AGUILAR, JASON B.  
Asst. District Counsel, USINS  
550 Kearny Street, Suite 1000  
San Francisco, CA 94108

ORDER OF THE IMMIGRATION JUDGE

The Immigration Judge has considered the motion for a continuance filed by

Respondent/Applicant       Immigration and Naturalization Service

for the hearing scheduled for Oct 17, 2005 and concludes that the motion should be:

GRANTED because the Service does not oppose the request.

GRANTED because good cause has been established for the requested continuance.

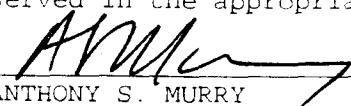
DENIED because no good cause has been established for the requested continuance.

DENIED because \_\_\_\_\_

IT IS ORDERED that the motion be, and it is hereby, denied.

IT IS ORDERED that the motion be, and is hereby granted.  
Notice of the new hearing date will be served in the appropriate manner.

DATE: 10/14/05

  
ANTHONY S. MURRY  
Immigration Judge

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MEI

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
SAN FRANCISCO, CA

\*F-BIOCINI, ANA BEATRIZ  
C/O AGUILAR, JASON B.  
550 KEARNY STREET, SUITE 1000  
SAN FRANCISCO, CA 94108  
INMATE NO: 93061-011

NOTICE OF HEARING IN REMOVAL PROCEEDINGS

DATE OF NOTICE: Oct 17, 2005  
FILE: A91-182-333

You are hereby notified that a hearing in this case is scheduled/rescheduled before the Immigration Court on Dec 19, 2005 at 1:00 P.M. at

5701 EIGHTH STREET CAMP PARKS  
DUBLIN, CA 94568

You may be represented in this proceeding at no expense to the Government by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. If you wish to be represented, your attorney or representative should appear with you at the scheduled hearing.

Except as otherwise ordered by an Immigration Judge, any motions (including motions for continuances and motions to withdraw as counsel), applications, or other correspondence concerning this case should be filed with the Immigration Court at:

550 KEARNY ST., SUITE 800  
SAN FRANCISCO, CA 94108

at least 10 days prior to the scheduled hearing. Evidence of payment of appropriate filing fees must be included.

ANYONE EXPECTING TO ENTER THE FACILITY IN ORDER TO APPEAR AT THE IMMIGRATION HEARING IS SUBJECT TO CORRECTIONS DEPARTMENT POLICIES AND PROCEDURES REGARDING ENTRY. CONTACT THE SECURITY OFFICE AT THIS PRISON IN ADVANCE OF THE DAY OF THE HEARING FOR FURTHER SPECIFIC INFORMATION ABOUT ENTRY GUIDELINES.

FOR INFORMATION REGARDING THE STATUS OF YOUR CASE, CALL TOLL FREE  
1-800-898-7180 OR 703-305-1662.

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CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:  MAIL (M)  PERSONAL SERVICE (P)  
TO:  ALIEN  ALIEN c/o Custodial Officer  ALIEN's ATT/REP  INS  
DATE: OCT 17 2005 BY: COURT STAFF Wm

Attachments:  EOIR-33  EOIR-28  Legal Services List  Other

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## Exhibit 5

Department of Justice  
Immigration and Naturalization Service

## Notice of Custody Determination

File No.: A91 182 333Date: March 2, 2006

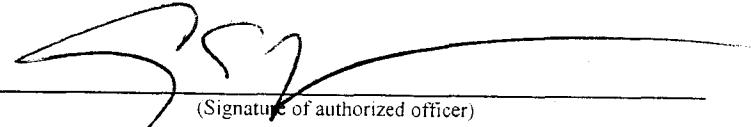
### BIOCINI, ANA BEATRIZ

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the Immigration Judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

detained in the custody of this Service.  
 released under bond in the amount of \$  
 released on your own recognizance.

You may request a review of this determination by the Immigration Judge.

You may not request a review of this determination by the Immigration Judge because the Immigration and Nationality Act prohibits your release from custody.

  
(Signature of authorized officer)

Craig Meyer

Supervisory Detention and Deportation Officer

(Title of authorized officer)

San Francisco, California

(INS office location)

I do  do not request a redetermination of this custody decision by the Immigration Judge.

I acknowledge receipt of this notification.

  
(Signature of respondent)

3-2-2006  
(Date)

### RESULT OF CUSTODY REDETERMINATION

On \_\_\_\_\_, custody status/conditions for release were reconsidered by:

Immigration Judge       District Director       Board of Immigration Appeals

The results of the redetermination/reconsideration are:

<input type="checkbox"/> No change - Original determination upheld.	<input type="checkbox"/> Release - Order of Recognizance
<input type="checkbox"/> Detain in custody of this Service.	<input type="checkbox"/> Release - Personal Recognizance
<input type="checkbox"/> Bond amount reset to _____ \$	<input type="checkbox"/> Other: _____

(Signature of officer)



**U.S. Department of Homeland Security**  
U.S. Immigration and Customs Enforcement

SFR DRO 50/10

*Office of the Field Director*

630 Sansome Street, Room 590  
San Francisco, CA 94111

March 2, 2006

**TO: CLERK OF THE COURT**  
Office of Immigration Judge  
San Francisco, CA

**BIOCINI, ANA BEATRIZ (A91 182 333)**  
RESPONDENT

06 MAR -3 AM 942

Please set the above named subject for an immediate custody hearing. The subject's case is **To Be Set** at the FCI Dublin **EOIR**.

The respondent's current address is: **IN ICE CUSTODY**

Master / Custody hearing date: 3/5  
per ✓✓✓✓ on 3/5/06  
Court Clerk Date

  
Mark A. Moser, Deportation Officer  
For Deportation Branch

## Exhibit 6

[Search for Case](#)[Help](#)[Print Page](#)

## General Docket

### US Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 06-74408

Filed: 9/11/06

Nsuit: 0

Biocini, et al v. Mukasey

Appeal from: Immigration and Naturalization Service

-----  
Case type information:

- 1) agency
- 2) review
- 3)

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## Lower court information:

District: 0971-3 : A91-182-333

Date Filed: 9/11/06

Date order/judgment: \*\*/\*\*/\*\*

Date NOA filed: \*\*/\*\*/\*\*

-----  
Fee status: paid-----  
Prior cases:

None

## Current cases:

None

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06-74408 Biocini, et al v. MukaseyANA BEATRIZ BIOCINI, aka Ana  
Racines Jaramillo, Ana  
Jaramillo de Rivera  
PetitionerHolly S. Cooper, Esq.  
FAX 530/752-0822  
530/754-4833  
[COR LD NTC ret]  
LAW OFFICES OF HOLLY COOPER  
P.O. Box 4358  
Davis, CA 95617-4358

v.

MICHAEL B. MUKASEY, Attorney  
General  
RespondentRonald E. LeFevre, Chief  
Counsel  
[COR NTC gov]  
OFFICE OF THE DISTRICT COUNSEL  
Department of Homeland Security  
P.O. Box 26449  
San Francisco, CA 94126-6449

Edward J. Duffy, Attorney  
FAX 202/616-4949  
202/353-7728  
[COR LD NTC gov]  
John D. Williams, Esq.  
FAX 202/307-0592  
202/616-4854  
[COR LD NTC gov]  
DOJ - U.S. DEPARTMENT OF  
JUSTICE  
Civil Div./Office of  
Immigration Lit.  
P.O. Box 878, Benjamin Franklin  
Station  
Washington, DC 20044

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06-74408 Biocini, et al v. Mukasey

ANA BEATRIZ BIOCINI, aka Ana Racines Jaramillo, Ana  
Jaramillo de Rivera

Petitioner

v.

MICHAEL B. MUKASEY, Attorney General

Respondent

Docket as of January 29, 2008 11:22 pm

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06-74408 Biocini, et al v. Mukasey

9/11/06 FILED INS Petition for REV and Motion for Stay. Docketed Cause and Entered Appearance of Counsel. Pursuant to G.O. 6.4(c)(1)(3) A TEMPORARY STAY OF REMOVAL IS IN EFFECT pending further order. The schedule is set as follows: Pursuant to G.O. 6.4(c)(1)(3), the schedule is set as follows: Cert. Admin. Record due 11/6/06 Response to motion for stay due 12/4/06 for Alberto R. Gonzales. (MOATT) [06-74408] (jd)

9/11/06 Filed Petitioner Ana Beatriz Biocini's motion to stay deportation (see schedule above) [06-74408] served on 9/8/06 [5942711]. (MOATT) [06-74408] (jd)

9/11/06 Verified that Petitioner's counsel of record has been admitted to practice in this court. [06-74408] (jd)

9/11/06 Detained: Yes [06-74408] (jd)

9/22/06 Received notification of payment of docket fee ( date paid: 9/22/06) [06-74408] (wp)

10/31/06 Electronic Certified Administrative Record Filed. CD-ROMS: 1 [06-74408] (rayc)

11/6/06 Received Respondent Alberto R. Gonzales letter dated 10/30/06 re: the record has been filed [06-74408] (wp)

12/21/06 Received (late) Respondent Alberto R. Gonzales's motion to dismiss; opps to motion for stay and request to hold briefing in abeyance; served on 12/18/06. (MOATT) [06-74408] [06-74408] (dv)

12/26/06 Filed Petitioner Ana Beatriz Biocini's motion to extend time to file response to respondent's motion to dismiss and reply to opposition to motion for stay of removal. (MOATT) [06-74408] served on 12/22/06 [6049097] [06-74408] (wp)

1/3/07 Received Petitioner Ana Beatriz Biocini's addendum to petitioner's motion to extend time (MOATT) [6049097-1] , served on 1/2/07 [06-74408] (wp)

1/22/07 Filed Petitioner Ana Beatriz Biocini's reply to respondent's opposition to motion for stay of removal. (MOATT) [6041214-1] served on 1/19/07 [06-74408] (wp)

1/22/07 Filed Petitioner Ana Beatriz Biocini response to respondent's motion to dismiss (MOATT) [6041214-1] served on 1/19/07 [06-74408] (wp)

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06-74408 Biocini, et al v. Mukasey

2/22/07 Filed order MOATT (A. W. TASHIMA, Sidney R. THOMAS): Pet's motion for extension of time to file a response is granted. Resp's motion to dismiss for lack of juris is denied w/o prejudice to renewing the arguments in the answering brief. The record has been filed. The op brief is due 5/29/07, ans brief 7/28/07, reply brief is due 14 days after service. [06-74408] (ca)

5/25/07 14 day oral extension by phone to file Petitioner's opening brief [06-74408]. Petitioners' brief due 6/12/07; respondents' brief due 8/13/07; the optional reply brief is due 14 days after service of the answering brief. (lb)

6/13/07 Filed original and 15 copies Petitioner Ana Beatriz Biocini opening brief ( Informal: no) 56 pages served on 6/12/07 [06-74408] (wp)

7/30/07 Rcvd notice of appearance of Edward Duffy (Withdrew as counsel: attorney OIL for Alberto R. Gonzales [06-74408] (wp)

7/30/07 Filed Alberto R. Gonzales motion to extend time to file respondent's brief (promo) [06-74408] served on 7/27/07 [6248076] (wp)

8/2/07 Filed order (Deputy Clerk: cag) Respondent's motion for an ext of time to file respondent's brief is granted. The respondent's brief is due 9/27/07. The reply brief is due 14 days after service of the answering brief. [06-74408] (wp)

9/21/07 Received Ana Beatriz Biocini additional citations, served on 9/19/07 (MERITS PANEL) [06-74408] (wp)

9/25/07 Received Respondent Alberto R. Gonzales letter dated 9/24/07 re: request for mediation. (CONFATT) [06-74408] (wp)

9/28/07 Filed order CONFATT (em) Case referred to Confatt for assessment conference only. Conference to be on 10/31/07 at 11:00. By telephone (y/n): yes. The briefing schd is vacated. [06-74408] (wp)

10/26/07 Filed order CONFATT ( RGA) At the request of csl for petitioner, the conference schd for 10/31/07 is reschd for assessment conference only on 11/8/07 at 11:00. By telephone (y/n): yes. [06-74408] (wp)

11/13/07 Filed order CONFATT (RGA) The court will initiate a further assessment conference by telephone on 12/4/07, at 10:30 a.m. PACIFIC (San Francisco) Time. [06-74408] (ec)

Docket as of January 29, 2008 11:22 pm

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06-74408 Biocini, et al v. Mukasey

12/6/07 Filed order CONFATT ( RGA) A further pre-briefing conference will be held on 2/12/07 at 11:00 By telephone (y/n): yes [06-74408] (wp)

1/22/08 Filed joint motion to remand and stay the briefing schd. (CONFATT) [06-74408] Served on 1/18/08 [06-74408] (wp)

1/29/08 Order filed CONFAT (Dep. Clk. RGA) The further assessment conference previously scheduled for 2/12/08, is cancelled. The parties' joint motion to remand this matter to the Board of Immigration Appeals is granted. Based on further agreement of the parties, and pursuant to Appendix A(52) of the General Orders, the Court orders that petitioner's removal is stayed pending a Board decision in this matter. The certified copy of this order sent to the agency shall constitute the mandate. REMANDED. ( Procedurally Terminated Without Judicial Action; Remanded) [06-74408] (lin)

Docket as of January 29, 2008 11:22 pm

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<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
02/12/2008 17:02:32			
PACER Login:	us3188	Client Code:	
Description:	dkt report	Case Number:	06-74408
Billable Pages:	6	Cost:	0.48

## Exhibit 7



U.S. Department of Homeland Security  
Immigration and Customs Enforcement

SFR DRO 50/10

Office of the Field Director

630 Sansome Street, Room 590  
San Francisco, CA 94111

**BIOCINI, Ana Beatriz**  
C/O Lerdo Facility  
17635 Industrial Farm Road  
Bakersfield, CA

**A91 182 333**

**Decision to Continue Detention  
Following File Review**

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

- (1) *Your removal has been delayed solely through your filing of your Petition for Review with the US Court of Appeals for the Ninth Circuit, and the resulting automatic stay of removal.*
- (2) *Your removal is imminent since we have received a travel document from your Consulate*

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

*AMW/Marvin*

## Decision to Continue Detention Following File Review

Page 2

BIOCINI, Ana, (A91 182 333)

Therefore, pursuant to the authority contained in Sections 236 and 241 of the Immigration and Nationality Act, and parts 236 and 241 of the Code of Federal Regulations, I have determined that you shall continue to be detained in the custody of this Agency pending further review.

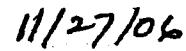
Your custody case will remain with this unit. **This unit will conduct further review in one year or when the Ninth Circuit Court of Appeals has made a decision in your case.** You will be notified of this at the earliest possible convenience. It is in your best interest to maintain proper behavior while awaiting this review. If you have any questions please contact:

U.S. Department of Homeland Security  
Immigration and Customs Enforcement

Attn: Custody Officer  
630 Sansome St. 6<sup>th</sup> floor  
San Francisco, CA 94111



Nancy Alcantar / Field Office Director



Date

## PROOF OF SERVICE

## (1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I TROY MILLER, IEA  
Name of ICE Officer Title

certify that I served BIOCINI, ANA with a  
copy of

Name of detainee  
this document at KERCO CO. INC on 12-5-06, at 0100  
Institution Date Time

(b) I certify that I served the custodian \_\_\_\_\_,  
Name of Official

\_\_\_\_\_, at \_\_\_\_\_, on  
Title Institution  
\_\_\_\_\_, with a copy of this document.

Date

## OR

## (2) Service by certified mail, return receipt. (Attach copy of receipt)

I \_\_\_\_\_, certify  
Name of ICE Officer Title

that I served \_\_\_\_\_ and the custodian \_\_\_\_\_  
Name of detainee Name of Official

with a copy of this document by certified mail at \_\_\_\_\_ on  
Institution Date

(X) CC: Attorney of Record or Designated Representative

(X) CC: A-File

Received Time Dec. 5. 4:26PM

(Final 10/18/99)

## Exhibit 8

**No. 06-74408**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**ANA BEATRIZ BIOCINI,  
Petitioner,**

**v.**

**MICHAEL MUKASEY,  
Attorney General of the United States,  
Respondent.**

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**PETITION FOR REVIEW FROM THE  
BOARD OF IMMIGRATION APPEALS  
A91-182-333**

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**JOINT MOTION TO REMAND AND  
TO STAY THE BRIEFING SCHEDULE**

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Ana Beatriz Biocini (“Biocini”) petitioned for judicial review of a final removal order entered by the Board of Immigration Appeals. The parties jointly move to remand the petition to the Board for further review.

Biocini filed a timely petition from the Board’s final removal order asserting, in part, that the Board erred when it retroactively applied Matter of Y-L, 23 I & N. Dec. 270 (A.G. 2002), in holding that Biocini’s 1998 drug trafficking conviction was presumptively a particularly serious crime and thus she was

ineligible for withholding of removal for committing a particularly serious crime.

On August 29, 2007, the Ninth Circuit decided Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th cir. 2007), which held that applying Matter of Y-L- to aliens who pleaded guilty to drug trafficking crimes prior to the date of that decision was impermissibly retroactive . Thus, on remand the BIA must determine whether Biocini's conviction is a particularly serious crime under the Matter of Frentescu multi-factor balancing test.

Each party will bear its own fees and costs. The parties request that the Court order a stay of removal until the Board issues a decision on remand.

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Respectfully submitted,  
PETER D. KEISLER  
Assistant Attorney General  
United States Department of Justice  
Civil Division

ALISON MARIE IGOE  
Senior Litigation Counsel  
Office of Immigration Litigation

---

HOLLY S. COOPER  
U.C. Davis Immigration Law Clinic  
One Shields Avenue, Bldg. TB-30  
Davis, CA 95616  
(530) 754-4833

Counsel for Petitioner

Dated:

---

EDWARD J. DUFFY  
Trial Attorney  
Office of Immigration Litigation  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044  
(202) 353-7728

Counsel for Respondent

## Exhibit 9

U.S. Office of Detention and Removal Operations

San Francisco, California

U.S. Department of Homeland Security

630 Sansome Street

San Francisco, CA 94111



**U.S. Immigration  
and Customs  
Enforcement**

**Ana Beatriz BIOCINI**  
C/O In Agency custody

**A91 182 333**

### **Decision to Continue Detention**

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

Your removal has been delayed through your filing of a Petition for Review with the US Court of Appeals for the Ninth Circuit, and the resulting automatic stay of removal.

Based on the above, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

  
\_\_\_\_\_  
Timothy Aitken, Acting Field Office Director

  
\_\_\_\_\_  
Date

**Decision of Post Order C today Review – Detain  
Ana Beatriz BIOCINI**  
Page 2

A91 182 333

## **PROOF OF SERVICE**

**(i) Personal Service (Officer to complete both (a) and (b) below.)**

(a) I ADAM TRUONG TPA  
certify that I served ANA BEATRIZ BICAIN Title  
this document at URDO PRETRIM Name of detainee  
Institution on 02/29/08, at 0910 Date

(b) I certify that I served the custodian ADAM TRUONG  
ICA Name of Official  
02/25/08 Title LENDI PRETRIM Institution  
Date with a copy of this document.

OR

(2) Service by certified mail, return receipt. (Attach copy of receipt)

I \_\_\_\_\_, Name of ICE Officer \_\_\_\_\_, certify  
that I served \_\_\_\_\_, Title \_\_\_\_\_  
Name of detainee \_\_\_\_\_ and the custodian \_\_\_\_\_  
with a copy of this document by certified mail at \_\_\_\_\_, Name of Official  
Institution \_\_\_\_\_ on \_\_\_\_\_.  
Date \_\_\_\_\_

cc: Attorney of Record or Designated Representative  
 cc: A-File

## Exhibit 10

U.S. Department of Justice  
Immigration and Naturalization Service

**Notice of Custody Determination**

File No.: A91 182 333

Date: February 28, 2008

**Ana Beatriz BIOCINI**  
(IN AGENCY CUSTODY)

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

- detained in the custody of this Service.
- released under bond in the amount of \$ \_\_\_\_\_
- released on your own recognizance.
  
- You may request a review of this determination by the Board of Immigration Appeals.
- You may not request a review of this determination by an immigration judge because the Immigration and Nationality Act prohibits your release from custody.

*Yakov Grinberg*  
(Signature of authorized officer)

**Yakov Grinberg**  
Supervisory Detention and Deportation Officer  
(Title of authorized officer)

San Francisco, CA.  
(INS office location)

I do  do not request a re-determination of this custody decision by an immigration judge.

I acknowledge receipt of this notification.

*Ana Beatriz BIOCINI*  
(Signature of respondent)

*02/28/08*  
(Date)

**RESULT OF CUSTODY REDETERMINATION**

On \_\_\_\_\_, custody status/conditions for release were reconsidered by:

Immigration Judge       District Director       Board of Immigration Appeals

The results of the re-determination/reconsideration are:

<input type="checkbox"/> No change - Original determination upheld.	<input type="checkbox"/> Release - Order of Recognizance
<input type="checkbox"/> Detain in custody of this Service.	<input type="checkbox"/> Release - Personal Recognizance
<input type="checkbox"/> Bond amount reset to <u>S</u> _____.	<input type="checkbox"/> Other: _____

*(Signature of officer)*